assessment by the rating authority on the ground of a procedural defect in the filing of the notice of appeal. The order of the High Court put an end to the litigation and was clearly a final order according to Lord Alverstone's test. We disagreed with the view taken by the High Court Judge and the effect of our decision was to enable the appeal to the High Court, which had been barred *in limine* by the High Court Judge, to proceed. We removed the finality of the High Court order and in effect reopened the proceedings. When application was made to us for leave to appeal to the Yang di-Pertuan Agong, we decided that our order which it was desired to appeal against was an interlocutory order and as we did not consider it to be a fit one for appeal, we refused leave.

In the present case our order refusing an extension of time for the applicant to file the record of appeal put an end to the proceedings and applying Lord Alverstone's test finally disposed of the rights of the parties by barring the unsuccessful plaintiff from appealing against the order of the High Court. Our order of the 15th May, 1962, is therefore for the purposes of appeal a final order against which the applicant may appeal as of right provided the value of the subject matter is not less than $4,500 (and as to that there is no dispute) and provided that he complies with the usual conditions as to security and the provision as to time.

I would allow the application with costs and give conditional leave to appeal on the appellant giving security for costs in the sum of $5,000 and filing the record within three months.

Hill Ag. C.J.: I agree with the judgment which my learned brother Good J.A. has just read. Out of a number of conflicting opinions and decisions that of Lord Alverstone in *Bozson's* case stands out as the one judgment that provides a real and practical test for determining whether an order is final or interlocutory and I too would apply it here.

Suffian J. concurred.

Application allowed.

Solicitors: *Donaldson & Burkinshaw; Rajendra & Teik Ee.*

Re PERTING TIMOR ELECTION (No. 2)

[C.A. (Hill Ag. C.J., Good J.A. and Suffian J.) July 18, 1962]

[K.L. — F.M. Civil Appeal No. 25 of 1962]

Election Offences Ordinance, 1954, s.33 — Appeal from Election Judge — Whether ss.36 and 37, Courts Ordinance, 1948 applicable.

Appeal — Right of appeal from interim or interlocutory order of Election Judge.

By virtue of section 33 of the Elections Offences Ordinance, 1954, an appeal from an Election Judge is an appeal from a special tribunal and therefore sections 36 and 37 of the Courts Ordinance, 1948, have no application.

There is no inherent right of appeal from the interim or interlocutory order of an Election Judge. The right of appeal in such cases must be expressly granted.

Cases referred to:—

(1) *Joseph Theberge* v. *Philippe Laudry* (1876-7) 2 App. Cas. 102, 106.

(2) *Lord Strickland* v. *Giuseppe Grima* [1930] A.C. 285, 297.

(3) *De Silva* v. *Attorney-General for Ceylon* [1949] W.N. 248, 249.

(4) *Senanayake* v. *Navaratne* [1954] A.C. 640, 651.

COURT OF APPEAL.

K. A. Menon for the appellant.

Henry Cheah for the respondent.

Hill Ag. C.J.: On the 28th May, 1962, an Election Judge made the following interim order in Election Petition No: 6 of 1961 between Kam Ah Chai, petitioner, and Chia Kia Poh, respondent:—

"Upon the petition of Kam Ah Chai also known as Chow Syh Kwong and upon a preliminary objection raised by the respondent to the jurisdiction of the Court to hear and dispose of this petition and upon hearing Mr. S. E. Teh of counsel for the petitioner and Mr. K. A. Menon of counsel for the respondent and upon reading the said petition and the affidavit of the petitioner filed the 25th day of October, 1961 and the affidavit of Chow Tek Noe filed the 25th day of October, 1961, And the Court being of opinion that under Regulation 11(5) of the Local Government (Conduct of Elections) Regulations, 1960, the decision of the Returning Officer was not final and conclusive so as to oust the jurisdiction of the Court to hear and determine this petition Doth overrule the said preliminary objection And the Court Doth Order that the State Secretary of the State of Pahang or any person appointed by the said State Secretary in that behalf do conduct a test to determine whether the respondent herein Chia Kia Poh is able to speak, read and write the Malay or English language with a degree of proficiency sufficient in the opinion of the said State Secretary or such other person appointed by him in that behalf, to enable him to take an active part in the proceedings of the Town Council of Bentong in accordance with Order 5(d) of the Town Council of Bentong Order, 1960 AND IT IS FURTHER ORDERED that the hearing of the Petition be resumed on a date to be fixed AND IT IS FURTHER ORDERED that costs be reserved."

On the 1st of June, 1962, the respondent filed notice of appeal against the above order and the matter now for consideration by this Court is a motion by the petitioner that the notice of appeal should be struck out on the ground that no appeal shall be brought by virtue of section 37(1)(d) of the Courts Ordinance, 1948.

The matter only presents difficulty because the order against which the appeal is lodged is an interim or interlocutory order made by the Election Judge in the preliminary stages of the hearing of the Election Petition. The learned Judge had not determined the issues set out in section 36 of the Election Offences Ordinance, 1954 (No: 9 of 1954) and had not certified his determination. If he had, such determination would be final according to this section and no appeal would lie for section 36 states *inter alia* "upon such certificate being given, such determination shall be final".

Part VII of the Election Offences Ordinance deals with Election Petitions. Section 33(1) reads as follows:—

"Every election petition shall be tried by the Chief Justice or by a Judge of the High Court nominated by the Chief Justice for the purpose."

Sub-sections (2) and (3) deal with procedural powers of the Election Judge and sub-section (4) enables interlocutory matters in connection with an election petition to be dealt with by any Judge of the High Court.

In view of these provisions of the Election Offences Ordinance it appears to me that what is involved here is an appeal from a special tribunal, namely an Election Judge, and not an appeal from a Judge of the High Court. An Election Judge would appear to be in a position analogous to that of a Judge who is the Chairman of a Commission. If this view is correct then sections 36 and 37 of the Courts Ordinance (No: 43 of 1948) have no application for these sections deal with appeals from judgments or orders of the High Court as such.

What then is the position with regard to appeals from interim or interlocutory orders made by an Election Judge? The right of appeal is not an inherent right, but one that must be expressly granted or conferred. Neither in the Constitution, nor in the Courts Ordinance, nor in the Election Offences Ordinance is this right conferred and in my view there is therefore no such right of appeal.

It appears that the desirability of prompt and final conclusions where disputes concerning representation of the people are concerned has been recognised and provided for in many Commonwealth countries. This object is generally achieved by the creation of Special Tribunals specifically empowered finally to determine such disputes.

I am fortified in the views I have expressed above by decisions of the Privy Council in appeals from Canada, Malta and Ceylon in *Joseph Theberge* v. *Philippe Laudry* [1]; *Lord Strickland* v. *Giuseppe Grima* [2]; *De Silva* v. *Attorney-General for Ceylon* [3] and *Senanayake* v. *Navaratne* [4].

These four cases were all concerned with the right of appeal from Election or Special Tribunals and I will quote briefly from them. In the Canadian appeal the Lord Chancellor (Lord Cairns) stated:—

"A jurisdiction of that kind is extremely special, and one of the obvious incidents or consequences of such a jurisdiction must be that the jurisdiction, by whomsoever it is to be exercised, should be exercised in a way that should as soon as possible become conclusive, and enable the constitution of the Legislative Assembly to be distinctly and speedily known."

In *Lord Strickland* v. *Grima* the Canadian case was referred to in these terms:—

"His Majesty, in these letters patent is merely adopting principles, to which all Lord Cairns's reasoning applies. He assumes that any enlightened legislative body would itself choose just such a tribunal as he himself prescribes for the determination of all such questions: accordingly, he creates a jurisdiction in terms of finality which leave no room for any review by himself.

And the history of this case, as their Lordships have detailed it, serves to demonstrate the convenience of the course in this instance taken. The action impugning the election here was commenced on July 5, 1928: the decision of the Court of Appeal was given in little more than a month — on August 14, 1928. It is more than a year later that this appeal comes before the Board."

In *De Silva's case* Lord Simonds stated:—

"It was contended for the petitioner that different considerations applied where, as here, the jurisdiction of the election judge to hear election petitions was not substituted for that of the legislative body itself but was created *de novo* on the establishment of that body. But that appeared to their Lordships to be an unsubstantial distinction and in effect to be met by the later case of *Strickland* v. *Grima*. Such a dispute as was here involved concerned the rights and privileges of a legislative assembly, and, whether that assembly assumed to decide such a dispute itself or it was submitted to the determination of a tribunal established for that purpose, the subject matter was such that the determination must be final, demanding immediate action by the proper executive authority and admitting no appeal to His Majesty in Council."

Finally in *Senanayake* v. *Navaratne* occurs the following passage:—

"They are satisfied that the election judge, as established by the Order-in-Council of 1946, was a tribunal with a jurisdiction, not only to determine finally the question whether the corrupt practices alleged in the petition had been committed, but also to determine finally whether, upon the true construction of the Order-in-Council, it was competent in the circumstances for the petitioner to maintain his amended petition. Their Lordships do not desire to repeat what was said by their predecessors in the cases cited. Suffice it to say that, in their Lordships' opinion, the peculiar nature of the jurisdiction and the importance in the public interest of securing at an early date a final determination of the matter and the representation in Parliament of the constituency affected, make it clear that it was not the intention of the Order-in-Council to create a tribunal with the ordinary incident of an appeal to the Crown."

I would therefore strike out the notice of appeal filed on the 1st of June, 1962, with costs to the petitioner.

Good J.A. and **Suffian J.** concurred.

Solicitors: *Braddell & Ramani: Allen & Gledhill.*

GOVINDARAJU v. KRISHNAN

[A.C.J. (Ismail Khan J.) September 5, 1962]

[Seremban — Civil Appeal No. 4 of 1961]

Landlord and Tenant — Letting of premises on State land — Determination of tenancy — Whether transaction prohibited by Land Rules, 1930, r.41 — Admission as tenant — Estoppel from denying — Evidence Ordinance, 1950, s.116.

Land Laws — T.O.L. holder — Letting of premises on State land — Whether transfer of licence — Land Rules, 1930, r.41.

The appellant whose premises stood on State land of which he was in lawful possession under a Temporary Occupation Licence rented two rooms to the respondent at a monthly rent of $30. This tenancy was duly determined by a notice in writing. Though the tenancy was not one protected by the Control of Rent Ordinance, 1956, the respondent refused to deliver up possession arguing that the tenancy was illegal, void and of no effect because the appellant was only the holder of a Temporary Occupation Licence over the premises. The learned President held that this was a dealing with the Temporary Occupation Licence and any dealing with such a licence was prohibited by rule 41 of the Land Rules.